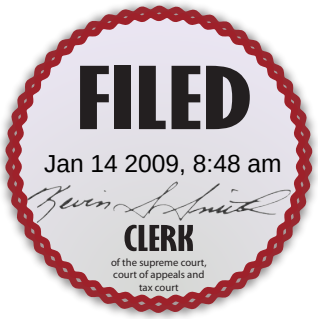

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IN THE
COURT OF APPEALS OF INDIANA

GERMAN LOPEZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-0807-CR-348
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Mary Margaret Lloyd, Judge
Cause No. 82D02-0711-FD-1045

January 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

German Lopez appeals his sentence for public indecency as a class D felony.[1] Lopez raises two issues, which we revise and restate as:

I. Whether the trial court abused its discretion in sentencing him; and

II. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. In November 2007, Lopez knowingly appeared in a state of nudity in a public place, Marshall's Department Store in Evansville, Indiana, with the intent to arouse his sexual desires by masturbating in an aisle. The State charged Lopez with public indecency as a class A misdemeanor and then filed an enhancement of the count to a class D felony because Lopez had previously been convicted of public indecency. On June 4, 2008, Lopez pled guilty as charged.

At sentencing, the trial court found the following mitigating factors: (1) the strong support system of Lopez's family; (2) Lopez's good work history and ethic; (3) Lopez's acceptance of responsibility for the crime; and (4) that Lopez had lost a marriage, home, friends, job, money, reputation, and his freedom because of the crime. The trial court found as aggravating factors that: (1) Lopez has four prior convictions "for this exact same type of offense;" (2) he had been treated "off and on for fifteen years for this exact problem;" and (3) he was "on bond for the same allegation" when he committed the present offense. Transcript at 78. Finding that the aggravating factors outweighed the

[1] Ind. Code § 35-45-4-1 (2004).

mitigating factors, the trial court sentenced Lopez to three years in the Indiana Department of Correction.

I.

The first issue is whether the trial court abused its discretion in sentencing Lopez. The Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances before the court." Id. A trial court abuses its discretion if it: (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law." Id. at 490-491. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Id. at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. Id.

Lopez argues that, although the trial court acknowledged his guilty plea and acceptance of responsibility as mitigating factors, the trial court "gave no weight to [them] whatsoever." Appellant's Brief at 17. Lopez also argues that the trial court gave "no weight" to his other mitigating factors. Id. at 18. However, the relative weight or value assignable to properly found mitigating factors is not subject to review for abuse of discretion. Anglemyer, 868 N.E.2d at 491. Consequently, we cannot review Lopez's argument.

II.

The next issue is whether Lopez's sentence is inappropriate in light of the nature of the offense and the character of the offender. First, we note that Lopez argues that his sentence is both inappropriate and "manifestly unreasonable." Appellant's Brief at 17. Before January 1, 2003, Ind. Appellate Rule 7(B) provided: "The Court shall not revise a sentence authorized by statute unless the sentence is manifestly unreasonable in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). Today, the same rule provides: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is *inappropriate* in light of the nature of the offense and the character of the offender." (emphasis added). We no longer apply the "manifestly unreasonable" standard.[2] Thus, we will address only Lopez's argument that his sentence is inappropriate.

[2] The change in language is not simply a matter of semantics. Patterson v. State, 846 N.E.2d 723, 730 n.7 (Ind. Ct. App. 2006). The Indiana Supreme Court's revision to the rule "changed its thrust from a prohibition on revising sentences unless certain narrow conditions were met to an authorization to revise

Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that Lopez knowingly appeared in a state of nudity in a public place with the intent to arouse his sexual desires. At the time he committed the offense, he had been previously convicted of public indecency.

Our review of the character of the offender reveals that Lopez pled guilty and accepted responsibility for the offense. He has a good work history and a strong support system in his family. However, he was convicted of public lewdness on three different occasions in New Jersey, twice as misdemeanors and once as a felony. Lopez was sentenced to two years of probation for one of the misdemeanor convictions and to five years of probation as a result of the felony conviction. He was convicted of public indecency as a class A misdemeanor in Indiana in 2004. At the time of the present offense, Lopez had been released on bond for pending charges of public indecency and performing sexual conduct in the presence of a minor as class D felonies under a different cause number. Given Lopez's numerous prior convictions for the same type of crime as well as the failure of lesser measures to help him reform his behavior, we cannot say that Lopez's sentence is inappropriate.

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sentences when certain broad conditions are satisfied." Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005).

For the foregoing reasons, we affirm Lopez's sentence for public indecency as a class D felony.

Affirmed.

ROBB, J. and CRONE, J. concur